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8 **BEFORE THE**  
9 **BOARD OF PHARMACY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 4500

13 **ANGEL E. ORELLANA, a.k.a. ANGEL**  
14 **ERNESTO ORELLANA**  
15 **60 Teddy Avenue**  
16 **San Francisco, CA 94134**

**A C C U S A T I O N**

17 **Pharmacy Technician Registration No. TCH**  
18 **59395**

19 Respondent.

20 Complainant alleges:

21 **PARTIES**

22 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
23 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

24 2. On or about October 22, 2004, the Board of Pharmacy issued Pharmacy Technician  
25 Registration Number TCH 59395 to Angel E. Orellana, also known as Angel Ernesto Orellana  
26 (Respondent). The Pharmacy Technician Registration was in full force and effect at all times  
27 relevant to the charges brought in this Accusation and will expire on May 31, 2014, unless  
28 renewed.

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7. Section 4402, subdivision (a), of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period. Section 4402, subdivision (e), of the Code provides that any other license issued by the Board may be canceled by the Board if not renewed within 60 days after its expiration, and any license canceled in this fashion may not be reissued but will instead require a new application to seek reissuance.

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or

1 to the extent that the use impairs the ability of the person to conduct with safety to the public the  
2 practice authorized by the license.

3 . . .

4 “(l) The conviction of a crime substantially related to the qualifications, functions, and  
5 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
6 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
7 substances or of a violation of the statutes of this state regulating controlled substances or  
8 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
9 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
10 The board may inquire into the circumstances surrounding the commission of the crime, in order  
11 to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
12 or dangerous drugs, to determine if the conviction is of an offense substantially related to the  
13 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
14 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
15 of this provision. The board may take action when the time for appeal has elapsed, or the  
16 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
17 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
18 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
19 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
20 indictment.”

21 9. Section 490 of the Code provides, in pertinent part, that the Board may suspend or  
22 revoke a license when it finds that the licensee has been convicted of a crime substantially related  
23 to the qualifications, functions or duties of the license.

24 10. California Code of Regulations, title 16, section 1770, states:

25 “For the purpose of denial, suspension, or revocation of a personal or facility license  
26 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
27 crime or act shall be considered substantially related to the qualifications, functions or duties of a  
28 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a

1 licensee or registrant to perform the functions authorized by his license or registration in a manner  
2 consistent with the public health, safety, or welfare.”

### 3 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

4 11. Section 4021 of the Code states:

5 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section  
6 11053) of Division 10 of the Health and Safety Code.”

7 12. Section 4022 of the Code states, in pertinent part:

8 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,  
9 except veterinary drugs that are labeled as such, and includes the following:

10 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without  
11 prescription,’ ‘Rx only,’ or words of similar import.

12 ...

13 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on  
14 prescription or furnished pursuant to Section 4006.”

15 13. Cocaine is Schedule II controlled substance and a narcotic as designated by Health  
16 and Safety Code section 11055, subdivision (b)(6), and a dangerous drug within the meaning of  
17 Code section 4022.

### 18 COST RECOVERY

19 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
20 administrative law judge to direct a licensee found to have committed a violation or violations of  
21 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
22 enforcement of the case.

### 23 FACTS

24 15. On or about February 26, 2012, at approximately 1:35 a.m., two California Highway  
25 Patrol Officers were on patrol and traveling westbound on Interstate 80, near the Treasure Island  
26 on-ramp. Officer 1 was riding in the passenger seat of the patrol vehicle, and Officer 2 was  
27 driving. Officer 1 first observed Respondent’s vehicle traveling in excess of 75 miles-per-hour in  
28 a 50 mile-per-hour zone. Both officers observed Respondent’s vehicle swerving in and out of its

1 lane. Based upon these observations, the officers initiated an enforcement stop and instructed  
2 Respondent to exit the Fremont Street off-ramp and park on a side street near the exit.

3 16. Officer 1 approached the driver's side of Respondent's vehicle and noticed that the  
4 window was already rolled down. When Officer 1 asked Respondent why he was driving so fast,  
5 Respondent stated that he was trying to take care of his passenger who had had too much to drink.  
6 Officer 1 smelled the odor of an alcoholic beverage coming from within the vehicle. Officer 1  
7 also noticed that Respondent's eyes were red and glassy and his speech was slow and slurred.  
8 Respondent admitted that he consumed two small cups of beer at a friend's house in Richmond  
9 that night. Officer 1 asked Respondent to exit the vehicle. Respondent's gait was very unsteady  
10 as walked to the sidewalk. Respondent then admitted that he had actually consumed four small  
11 cups of beer at his friend's house.

12 17. Officer 1 asked Respondent to perform a series of Field Sobriety Tests (FSTs), which  
13 Respondent failed to perform as explained and demonstrated. Officer 1 concluded that  
14 Respondent had been driving under the influence and arrested him for violating Vehicle Code  
15 section 23152, subdivision (a) (driving under the influence of alcohol or drugs). Officer 1  
16 informed Respondent of implied consent, and Respondent chose the breath test. Once he was  
17 transported to the San Francisco CHP office he completed the breath test, which showed that he  
18 had a blood alcohol content of .212 percent and .215 percent. Respondent was then transported to  
19 San Francisco County Jail for booking.

20 18. Once they arrived to the San Francisco County Jail, Officer 2 escorted Respondent to  
21 a holding cell for a complete search with a metal detector. During the complete search,  
22 Respondent removed a clear plastic bag containing a white powdery substance from his right  
23 sock. When Officer 1 learned of what had been found in Respondent's sock, he informed  
24 Respondent that he would be adding a charge for violation of Health and Safety Code section  
25 11350, subdivision (a) (possession of controlled substance) to Respondent's booking card. After  
26 Officer 1 walked away, Officer 2 heard Respondent say, "It's Cocaine and I am going to lose my  
27 job." The substance tested positive for Cocaine on a presumptive test.

28

1           19. On or about May 22, 2012, in a criminal matter entitled *The People of the State of*  
2 *California v. Angel Ernesto Orellana*, in the San Francisco County Superior Court, Respondent  
3 was convicted by plea of nolo contendere of violating Vehicle Code section 23103 (reckless  
4 driving), a misdemeanor. Respondent was ordered to serve 18 months of probation, complete a  
5 12 hour First Offenders Program, and to pay various fees and fines.

6                                   FIRST CAUSE FOR DISCIPLINE

7                                   (Unprofessional Conduct – Possession of Cocaine)

8                                   (Bus. & Prof. Code § 4301)

9           20. Respondent has subjected his Pharmacy Technician Registration to disciplinary  
10 action under Code section 4301 in that he engaged in unprofessional conduct by possessing  
11 Cocaine. The circumstances are set forth above in paragraphs 14 through 18.

12                                   SECOND CAUSE FOR DISCIPLINE

13                                   (Unprofessional Conduct – Use of Alcohol Dangerous Manner)

14                                   (Bus. & Prof. Code § 4301, subd. (h))

15           21. Respondent has subjected his Pharmacy Technician Registration to disciplinary  
16 action under Code section 4301, subdivision (h), in that he used alcohol in a dangerous manner.  
17 The circumstances are set forth above in paragraphs 14 through 18.

18                                   THIRD CAUSE FOR DISCIPLINE

19                                   (Unprofessional Conduct – Conviction)

20                                   (Bus. & Prof. Code § 4301, subd. (I))

21           22. Respondent has subjected his Pharmacy Technician Registration to disciplinary  
22 action under Code section 4301, subdivision (I), as defined by California Code of Regulations  
23 section 1770, in that he was convicted of a crime substantially related to the qualifications, duties,  
24 or functions of a licensee or registrant. The circumstances are set forth above in paragraphs 14  
25 through 18.

26                                   PRAYER

27           WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this  
28 Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

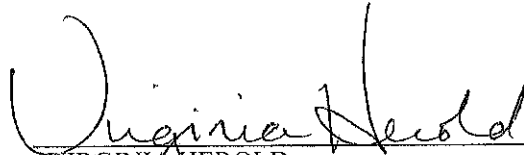
1           1. Revoking or suspending Pharmacy Technician Registration Number TCH 59395,  
2 issued to Angel E. Orellana, also known as Angel Ernesto Orellana;

1           2.     Ordering Angel E. Orellana, also known as Angel Ernesto Orellana to pay the Board  
2 of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to  
3 Business and Professions Code section 125.3; and

4           3.     Taking such other and further action as deemed necessary and proper.  
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7  
8 DATED: \_\_\_\_\_

2/12/13



VIRGINIA HEROLD  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
*Complainant*

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